

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 18F-0866E

DELTA-MONTROSE ELECTRIC ASSOCIATION,

COMPLAINANT,

V.

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.,

RESPONDENT.

**INTERIM DECISION REGARDING JOINT
NOTICE OF SETTLEMENT IN PRINCIPLE**

Mailed Date: July 18, 2019

Adopted Date: July 17, 2019

I. BY THE COMMISSION

A. Statement

1. In response to a request made by Delta-Montrose Electric Association (DMEA), the Commission held an emergency prehearing conference in this proceeding on Friday, July 12, 2019. In its request, and again at the prehearing conference, DMEA raised the issue of whether the evidentiary hearing in this proceeding, currently set for August 12 through 16, 2019, should be rescheduled.

2. The Commission agreed to take under advisement DMEA's suggestion to hold the evidentiary hearing sooner than currently scheduled or otherwise modify the current procedural schedule. The Commission scheduled a deliberations meeting the following Monday—July 15, 2019—to discuss the issue.

3. Three hours before the deliberations meeting was set to begin, DMEA and Tri-State Generation and Transmission Association, Inc. (Tri-State) filed a Joint Notice of Settlement in Principle. The two parties indicated that they had reached a settlement in principle, had agreed to suspend discovery and all pending depositions, and that DMEA was willing to withdraw its request to expedite the evidentiary hearing. They further indicated that by the end of the week they intended to reduce the settlement to writing and anticipated shortly thereafter jointly requesting to vacate the evidentiary hearing. As well, the two parties stated that they “will make appropriate filings with the Commission by close of business on Friday, July 19, 2019 regarding next steps in this proceeding.”¹

4. The Commission held the deliberations meeting as scheduled. Both Commissioners expressed concern about various aspects of the settlement and this proceeding. They resolved to consider whether to order the parties to file the settlement agreement, how confidential materials would be treated, how the Commission would receive notice of Tri-State’s submissions or filings with the Federal Energy Regulatory Commission (FERC), and whether to order Tri-State to submit a chronology of its process by which it considered and decided to seek rate regulation by FERC.

5. This matter was brought back for discussion and deliberation at the Commission’s July 17, 2019 Weekly Meeting. The Commissioners voiced concern that the settlement may not be in the public interest, that its terms would be hidden from the public and the Commission and could be onerous, that the third party in this proceeding—the Colorado Energy Office—had been silent on the settlement, and that throughout this proceeding, Tri-State had employed dilatory tactics that were detrimental to stakeholders and the Commission.

¹ Joint Notice at p. 2.

6. Therefore, to protect the public interest and the dignity of this tribunal, the Commission makes the following three orders. First, the Colorado Energy Office must submit a filing, in this proceeding indicating whether its counsel has reviewed the settlement agreement and whether it believes the terms of the agreement are in the public interest. Second, the parties are ordered to file into the record in this proceeding, a public version and a highly confidential version of the executed settlement agreement. Third, Tri-State is ordered to file a summary of all actions taken by Tri-State, its employees and any third party consultants, including attorneys, from the period January 1, 2019, through Friday, July 12, 2019, concerning the steps it has taken to consider and to move Tri-State toward additional FERC regulation. That summary should include the identification of all communications, the participants in the communications, the date, duration, and type of communication (emails, meetings, phone calls) during this period. If Tri-State believes any of these actions are covered by the attorney client privilege or work product doctrine, they should provide this information as part of a “privilege” log, customarily used in discovery disputes. The summary should also include steps taken to develop, design, and create an unregulated affiliate or subsidiary whose accession to Tri-State membership could result in Tri-State no longer meeting the exemption set forth by § 210(f) of the Federal Power Act. This summary should be submitted in this proceeding, signed by Mr. Dougherty, and sworn to by Mr. Reif, and Mr. Highley.

II. **ORDER**

A. **It Is Ordered That:**

1. By the close of business on July 19, 2019, the Colorado Energy Office shall submit a filing indicating whether its counsel has reviewed the settlement agreement and whether

it believes the terms of the agreement are in the public interest, consistent with the discussion above.

2. The parties are ordered to file into the record in this proceeding, a public version and a highly confidential version of the executed settlement agreement.

3. Consistent with the discussion above, Tri-State Generation and Transmission Association, Inc. (Tri-State) shall file a summary of the actions it took to consider and to move Tri-State toward additional regulation by the Federal Energy Regulatory Commission.

4. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 17, 2019.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

Commissioners

COMMISSIONER JOHN GAVAN IS RECUSED.